

here, we cannot say the Puerto Rican courts were wrong. In failing to uphold their construction of the local statutes, the Circuit Court of Appeals was in error.

The judgment of the Court of Appeals is reversed and the complaint in the district court of Puerto Rico must stand dismissed, as ordered by that court and affirmed by the Supreme Court of Puerto Rico.

Reversed.

STATE TAX COMMISSION ET AL. v. VAN COTT.

CERTIORARI TO THE SUPREME COURT OF UTAH.

No. 491. Argued March 6, 7, 1939.—Decided March 27, 1939.

1. Salaries of employees or officials of federal instrumentalities are not immune under the Federal Constitution from taxation by the States. *Graves v. New York ex rel. O'Keefe*, ante, p. 466. P. 515.
 2. The judgment of the Supreme Court of Utah holding the salaries of an attorney for the Reconstruction Finance Corporation and the Regional Agricultural Credit Corporation, both federal agencies, exempt from state taxation, does not rest squarely upon the exemption in the Utah income tax law of salaries received from the United States "for services rendered in connection with the exercise of an essential governmental function," but appears also to have been actuated by the doctrine that state taxation of such salaries is forbidden by the Federal Constitution. P. 513.
 3. In view of the overruling of that doctrine by *Graves v. O'Keefe*, this Court vacates the judgment of the Supreme Court of Utah and remands the case to that court, in order that it may determine whether the salaries in question are exempted by the state statute, purely as a question of local law. P. 515.
- 95 Utah 43; 79 P. 2d 6, vacated.

CERTIORARI, 305 U. S. 592, to review a judgment sustaining a claim of exemption from state income taxation, on appeal from a ruling of the above-named Tax Commission.

Mr. Irwin Arnovitz, with whom *Messrs. Joseph Chez*, Attorney General of Utah, and *John D. Rice*, Deputy Attorney General, were on the brief, for petitioners.

Mr. W. Q. Van Cott, pro se.

The decision of the court below was based squarely upon the construction of the Utah taxing statute. It did not and could not reach the federal question and should not be reviewed.

The Reconstruction and Regional corporations are engaged exclusively in exercising traditional and important functions of the United States,—“essential governmental functions,” if that phrase applies to any federal activities. *Brush v. Commissioner*, 300 U. S. 352.

Under *Dobbins v. Commissioners*, 16 Pet. 435, and *Rogers v. Graves*, 299 U. S. 401, respondent’s salaries are immune from state taxation, irrespective of the state statute. Also, *McCulloch v. Maryland*, 4 Wheat. 316; *Helvering v. Gerhardt*, 304 U. S. 405.

No question as to the constitutionality of the Reconstruction or Regional Corporation is presented.

It is the present intention of Congress that the salaries of officers and employees of the United States and its instrumentalities shall be immune from taxation by the States.

By leave of Court, *Solicitor General Jackson* filed a brief on behalf of the United States, as *amicus curiae*.

MR. JUSTICE BLACK delivered the opinion of the Court.

The State of Utah’s income tax law, effective in 1935, exempts all “Amounts received as compensation, salaries or wages from the United States . . . for services rendered in connection with the exercise of *an essential governmental function*.”¹ (Italics supplied.) In his return of income taxes to the State for 1935 under this law, respondent claimed “as deduction” and “as exempt”

¹ Revised Stat. of Utah, 1933, § 80-14-4, (2) (g).

salaries paid him as attorney for the Reconstruction Finance Corporation and the Regional Agricultural Credit Corporation, both federal agencies. The exemptions were denied by the Tax Commission of Utah, but the Utah Supreme Court reversed.² Before the Commission and in the Supreme Court of Utah, respondent asserted, first, that his salaries were exempt by the terms of the state statute itself, and, second, that they could not be taxed by the State without violating an immunity granted by the Federal Constitution. In holding respondent's income not taxable, the Supreme Court of Utah said: "We shall have to be content to follow, as we think we must, the doctrine of the Graves Case [*Rogers v. Graves*, 299 U. S. 401], until such time as a different rule is laid down by the courts, the Congress, or the people through amendment to the Constitution."³ The *Graves* case applied the doctrine that the Federal Constitution prohibits the application of state income taxes to salaries derived from federal instrumentalities. We granted certiorari, in the present case, because of the importance of the principle of Constitutional immunity from state taxation which the Utah court apparently thought controlled its judgment.⁴

Respondent contends that the Utah Supreme Court's decision "was based squarely upon the construction of the Utah taxing statute which was held to omit respondent's salaries as a subject of taxation, and therefore that decision did not and could not reach the federal question and should not be reviewed." But that decision cannot be said to rest squarely upon a construction of the state statute. The Utah court stated that the question before it was whether respondent's salaries from the agencies in question were "taxable income for the purpose of the

² 95 Utah 43; 79 P. 2d 6.

³ 79 P. 2d 14.

⁴ 305 U. S. 592.

state income tax law," and that the answer depended upon whether these agencies exercised "essential governmental functions." But the opinion as a whole shows that the court felt constrained to conclude as it did because of the Federal Constitution and this Court's prior adjudications of Constitutional immunity. Otherwise, it is difficult to explain the court's declaration that respondent could not be taxed under the "doctrine of the *Graves* case *until such time as a different rule is laid down by the courts, the Congress or the people through amendment to the Constitution.*" (Italics supplied.) If the court were only incidentally referring to decisions of this Court in determining the meaning of the state law, and had concluded therefrom that the statute was itself intended to grant exemption to respondent, this Court would have no jurisdiction to review that question.⁵ But, if the state court did in fact intend alternatively to base its decision upon the state statute and upon an immunity it thought granted by the Constitution as interpreted by this Court, these two grounds are so interwoven that we are unable to conclude that the judgment rests upon an independent interpretation of the state law.⁶ Whatever exemptions the Supreme Court of Utah may find in the terms of this statute, its opinion in the present case only indicates that "it thought the Federal Constitution [as construed by this Court] required" it to hold respondent not taxable.⁷

⁵ *Miller's Executors v. Swann*, 150 U. S. 132, 136; *Interstate Railway Co. v. Massachusetts*, 207 U. S. 79, 84; *Louisville & Nashville R. Co. v. Western Union Telegraph Co.*, 237 U. S. 300, 302; cf. *Car-michael v. Southern Coal Co.*, 301 U. S. 495, 507.

⁶ *Abie State Bank v. Bryan*, 282 U. S. 765, 773.

⁷ Cf. *Red Cross Line v. Atlantic Fruit Co.*, 264 U. S. 109, 120; *Tipton v. Atchison, T. & S. F. Ry. Co.*, 298 U. S. 141, 152, 153; *Illinois Central R. Co. v. Messina*, 240 U. S. 395, 397.

After careful review of this Court's decisions on the question of intergovernmental immunity, the state court concluded that the Reconstruction Finance Corporation and the Regional Agricultural Credit Corporation were "instrumentalities" performing "essential governmental duties" and that state taxation of respondent's salaries violated the Federal Constitution as interpreted by the *Graves* case. Anticipating that this Court might re-examine that interpretation and apply a "different test," the state court said that "Until such is done the States are bound by the decision of the Supreme Court in . . . *Rogers v. Graves*, supra."

We have now re-examined and overruled the doctrine of *Rogers v. Graves* in *Graves v. O'Keefe*, ante, p. 466. Salaries of employees or officials of the Federal Government or its instrumentalities are no longer immune, under the Federal Constitution, from taxation by the States. Whether the Utah income tax, by its terms, exempts respondent, can now be decided by the state's highest court apart from any question of Constitutional immunity, and without the necessity, so far as the Federal Constitution is concerned, of attempting to divide functions of government into those which are essential and those which are non-essential.

"We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered. We may recognize such a change, which may affect the result, by setting aside the judgment and remanding the case so that the state court may be free to act. We have said that to do this is not to review, in any proper sense of the

term, the decision of the state court upon a non-federal question, but only to deal appropriately with a matter arising since its judgment and having a bearing upon the right disposition of the case.”⁸

Applying this principle, we vacate the judgment of the Supreme Court of Utah and remand the cause to that court for further proceedings.

Judgment vacated.

The CHIEF JUSTICE took no part in the consideration or decision of this case.

LOWDEN ET AL., TRUSTEES, v. SIMONDS-SHIELDS-LONSDALE GRAIN CO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 342. Argued January 30, 31, 1939.—Decided March 27, 1939.

1. Upon the facts of this case, *held* that, within the meaning of a tariff provision, there were “prior arrangements” covering “a specified period of time,” between a shipper and the railroad for the installation of grain doors in cars furnished to the shipper, and that the shipper was liable for the tariff charge for such service. P. 520.

2. A shipper can not escape liability to pay lawful tariff charges for carrier service by disclaiming liability when ordering it; nor can the carrier lawfully yield to such disclaimer. *Id.*

Involuntary rebates from tariff rates should be viewed with the same disapproval as voluntary rebates.

3. Where, after the commencement of a suit by a railroad to recover from a shipper a tariff charge of \$1.00 per car for a service rendered, the Interstate Commerce Commission determined that a charge higher than 60¢ per car for such service was unreasonable and authorized reparations accordingly, the railroad was entitled to recover upon its claim reduced *pro tanto*. P. 521.

97 F. 2d 816, reversed.

⁸ *Patterson v. Alabama*, 294 U. S. 600, 607.